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HOUSE BILL 765

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR HEARINGS TO
DETERMINE IF A PERSON WHO IS COMMITTED PURSUANT TO A
DETERMINATION OF INCOMPETENCY IS MENTALLY RETARDED; ENACTING A
NEW SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new Section 31-9-1.6 NMSA 1978 is enacted to
read:

"31-9-1.6. [NEW MATERIAL] HEARING TO DETERMINE MENTAL
RETARDATION. - -

A. Upon motion of the defense requesting a ruling,
the court shall hold a hearing prior to one year after a
defendant was determined to be incompetent. If the court finds,
by a preponderance of the evidence, that the defendant is
mentally retarded, the defendant shall be released upon the

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1 expiration of one year after the defendant was determined to be
2 incompetent.

3 B. As used in this section, "mentally retarded"
4 means significantly subaverage general intellectual functioning
5 existing concurrently with deficits in adaptive behavior. An
6 intelligence quotient of seventy or below on a reliably
7 administered intelligence quotient test shall be presumptive
8 evidence of mental retardation."

9 Section 2. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 1997.

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State of New Mexico
House of Representatives

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3 FORTY-THIRD LEGISLATURE
4
5 FIRST SESSION, 1997
6
7

8 February 24, 1997
9

10
11 Mr. Speaker:
12

13 Your JUDICIARY COMMITTEE, to whom has been referred
14

15 HOUSE BILL 765
16

17 has had it under consideration and reports same with
18 recommendation that it DO PASS, amended as follows:

19 1. On page 1, line 23, after "incompetent" insert "to stand
20 trial".

21
22 2. On page 1, line 23, after the period, strike the
23 remainder of the line and insert:

24 "B. If the court finds, by a preponderance of the
25 evidence, that the defendant is mentally retarded, the defendant

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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1
2 shall be:

3 (1) released upon the expiration of one year
4 after the defendant was determined to be incompetent to stand
5 trial; and

6
7 (2) referred to the department of health for an
8 evaluation of whether the defendant presents a likelihood of
9 serious harm to himself or the likelihood of serious harm to
10 others.

11 C. If the department of health determines that the
12 defendant presents a likelihood of serious harm to himself or the
13 likelihood of serious harm to others the department may commence
14 proceedings pursuant to Article 1 of Chapter 43 NMSA 1978.

15
16 D. The provisions of this section apply to all persons
17 in the custody of the department of health as of July 1, 1997."

18 3. On page 1, strike lines 24 and 25 in their entirety and
19 on page 2, strike lines 1 and 2 in their entirety.

20
21 4. Reletter the succeeding subsection accordingly.,

22
23 and thence referred to the APPROPRIATIONS AND FINANCE
24 COMMITTEE.

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 1 Against

Yes: 8

No: Mallory

Excused: M P. Garcia, Pederson, Rios, Sanchez

Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 6, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 765, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Coll, Buffett, Marquardt, Pearce, Picraux, Saavedra,
Taylor, JP, Watchman

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

HB 765/a

3
4 March 20, 1997

5
6 Mr. President:

7
8 Your JUDICIARY COMMITTEE, to whom has been referred

9 HOUSE BILL 765, as amended

10
11 has had it under consideration and reports same with
12 recommendation that it DO PASS, amended as follows:

13
14 1. Strike House Judiciary Committee Amendments 2, 3 and 4.

15
16 2. On page 1, line 23, after the period strike the remainder
17 of the line, strike lines 24 and 25, and on page 2, strike lines 1
18 and 2, and insert in lieu thereof:

19 "B. If the court finds, by a preponderance of the
20 evidence, that the defendant is mentally retarded, then no later
21 than one year from the court's initial determination that the
22 defendant is incompetent to stand trial, the department shall
23 perform an evaluation to determine whether the defendant presents
24 a likelihood of serious harm to himself or a likelihood of serious
25 harm to others.

C. If the department evaluation results in a finding

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that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department:

(1) shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others; or

(2) may commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with any crime other than first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings from which he was referred pursuant to this section to the department.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to stand

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trial. "

3. Reletter the succeeding subsection accordingly.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Tsosie

Absent: None

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